HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 6479 (SS) of 2001
Old no. 8651/93

Vijay Singh Rawat ..... Petitioner

Vs

State of U.P and others. ..... Respondents

Hon'ble P.C. Verma, J.
Hon'ble M.M. Ghildiyal, J.

Heard learned counsel for the petitioner Sh. V.K. Bist and learned Standing Counsel.

By means of this petition the petitioner has prayed to issue a writ, order or direction in the nature of certiorari quashing the order dt. 13-8-1985 passed by District Magistrate Pauri Garhwal by which the petitioner was dismissed from service, order dt. 16-9-1985 passed by District Magistrate Garhwal by which he has directed not to pay salary to the petitioner and other allowance except subsistence allowance for a period during which the petitioner was under suspension order dt. 16-8-1985 by which adverse entry was recorded in the service book of the petitioner and order dt. 18-8-1993, rejecting the claim petition of the petitioner by the U.P. Public Service Tribunal.

Brief facts of the case are that the petitioner was appointed on the post of Clerk on 17-12-1974 in the treasury at Pauri Garhwal. He was suspended and a departmental enquiry was initiated against him vide order dt. 2-2-1985. In the suspension order it was mentioned that the petitioner has committed dishonesty and corruption. Sub-Divisional Magistrate was appointed as Enquiry Officer. The Charge

sheet was served on the petitioner on 20-2-1985. The Chargesheet was issued leveling two charges against the petitioner, the 1st charge was in respect of short payment of the arrears of pension to Sh. Gyan Singh and the other charge was in respect of derelection of duties and to harass the pensioners. The reply was submitted by the petitioner and after considering the reply, the Enquiry Officer found him guilty of charge levelled against him.

The District Magistrate in agreement with the enquiry report dismissed the petitioner from service vide its orders dt. 13-8-1985. On 16-9-1985 order was passed by the District Magistrate by which the application of the petitioner for payment of salary was rejected holding that the petitioner is not entitled to get salary except subsistence allowances for a period during his suspension. The petitioner filed claim petition before U.P. Public Services Tribunal Lucknow, which was rejected by Tribunal vide order dt. 18-8-1993.

The order of Public Services Tribunal is challenged by the petitioner on various grounds, learned counsel for the petitioner has submitted that the tribunal has not recorded findings on every point raised in the writ petition.

There is no affidavit on the record show that the petitioner has raised an argument before the Tribunal, which was not considered. In absence of the affidavit of counsel, we do not find any force in the argument advanced by learned counsel.

Counsel for the petitioner has further submitted that no finding has been recorded in respect of non-furnishing of the document along with chargesheet. Annexure-6 to the writ petition is the reply of petitioner in respect of charges in which he has categorically stated

that since he has received certified copies of the documents which related to the charge sheet received on 13-3-1985 by hand, through reader and consequently, he has submitted his explanation. From the above facts it is clear that the petitioner has received the necessary documents along with the charge sheet. Therefore the allegation that he was not furnished with the documents along with charge sheet are baseless.

The charges levelled against the petitioner are that firstly, he had made short payment of the arrears of pension to Sh. Gyan Singh, which is proved beyond doubt. Secondly, the charge that he used to harass the pensioners and as such he was charged for derelection of duties. This charge was also proved against the petitioner.

The Enquiry Officer conducted the enquiry in accordance with law, there was no illegality in the Departmentally proceeding, full opportunity was given to the petitioner and as such, there is no illegality in the Department proceedings. The Enquiry Officer after giving full opportunity to the petitioner has held that the petitioner is guilty of the charges imposed against him. It is stated in the enquiry report that the petitioner was given 15 days time for reply and also handed over the copies of the relevant documents. He had denied the charges. The petitioner was also given opportunity of personal hearing and after hearing the submission of the petitioner and documents as well as after recording statement of Sh. Dhiraj Singh, orderly, Sh. Banarasi Das Peon, Sh. Hira Lal Deputy Collector, Sh. S.N. Thapliyal and Sh. Radha Ballabh Sh. Gyan Singh was found entitled to Rs. 6822 as arrears of his pension whereas he was paid only Rs. 3000/- which has come in the statements of the petitioner latter on. From the statements of Sh. Banarasi Das orderly, it is clear that Sh. Gyan Singh pensioner approached Sh. Hira Lal Deputy Collector with the

allegation that he has received less amount of pension which he came to know when his son has informed him at home.

It is not disputed that Sh. C.P. Pandey SDM who was an Enquiry Officer, recorded the statement of Sh Gyan Singh, Sh. Dheeraj Singh, Sh. Banarasi Dass, Sh. Hira lal, Sh. Radha Ballabh and Sh. S.N. Thapliyal, the petitioner had also cross examined the witnesses and on the basis of reply given by the petitioner as well as the statement recorded by Enquiry Officer, he has submitted the report. On the basis of the enquiry report, the dismissal order was passed by the District Magistrate, against which the petitioner filed claims petition before the Claim Tribunal. Before the Claims Tribunal the petitioner has raised only two grounds that there were contradictions in the statements of the witnesses and ignoring the contradictions, the Enquiry Officer has recorded the findings, therefore, the charge levelled against the petitioner is not proved. Secondly, he was only the Pension Clerk and his work was limited to disbursement of pension and it was the duty of Treasury Officer to ensure correct disbursement of pension. However, the Claims Tribunal after going through the statement of witnesses found that the conclusion drawn by the Enquiry Officer is well founded and there was no perversity in the impugned order. In respect of 2nd ground the Claims Tribunal has come to the conclusion that there is a specific allegation that only a part of the amount of pension was handed over to Sh. Gyan Singh by the petitioner and the remaining amount was paid by the petitioner later on. In case he was not responsible for making payment to the pensioner why he has made payment of the remaining amount, which was made after complaint. There is no illegality in the order of Claim Tribunal.

For the reasons stated above, we find no merit in the writ petition. Accordingly, the writ petition is dismissed. No order as to costs.

(M.M. Ghildiyal, J.) **(P.C. Verma, J.)**

September 23,9,2004
M.K.